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FAX TRANSMITTAL SHEET

June 29, 2007

FILE #: 21066

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| | FAX: | PHONE: |
| 1. Darryl Boyd
Department of Planning, Building
and Code Enforcement | (408) 292-6055 | |
| 2. Terrel A. Anderson
Union Pacific Railroad Company | (916) 789-6227 | (916) 789-6334 |

8 page(s) including cover

FROM: Shirley E. Jackson

Message:

Originals will will not be sent.

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21066

VIA FACSIMILE (408-292-6055)

Darryl Boyd
Principal Planner
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

Re: Union Pacific Railroad Company's Comments on Notice of Availability
of Draft EIR for Coyote Valley Specific Plan, SCH #2005062017

Dear Mr. Boyd:

We represent Union Pacific Railroad Company ("UP"). By this letter, UP presents its comments in response to the City of San Jose's Notice of Availability of Draft EIR and Public Comment Period regarding the Coyote Valley Specific Plan (the "Plan").

The Plan area comprises approximately 7,000 acres of mostly undeveloped land located 12 miles south of downtown San Jose. The Plan area is bounded by Tulare Hill and the Santa Teresa area of southern San Jose to the north, US Highway 101 and the Mount Hamilton Range to the east, the City of Morgan Hill to the south, and the Santa Cruz Mountains to the west. The existing land uses of the site are primarily agricultural and industrial in nature, but there is some residential housing located primarily in the southeastern portion of the area and in the greenbelt to the south of Palm Avenue.

Monterey Road runs through the northeastern portion of the Plan area. Located immediately adjacent to the southwest side of Monterey Road is the track and right-of-way of UP's Coast Subdivision line (the "Main Line"). The Plan proposes to substantially increase the population and the amount of housing, schools, playfields, and commercial buildings, either adjacent to or in close proximity to UP's active rail line.

UP hereby brings to the City's attention its concerns regarding encroachment, traffic, safety, noise, vibration, and mechanical odors. Based on our comments, below, UP respectfully requests that the City analyze these impacts associated with the Plan's location near the Main Line and require the developer to provide mitigation measures to reduce those impacts.

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1. Background on UP

Many people know about UP's distinguished history. UP played a prominent role in the development of the first transcontinental railroad in the late 1860's. What many people do not know is that today, UP remains a significant owner of railroad property and a major freight transporter in the western two-thirds of the United States. In fact, UP is the largest railroad company in North America.

Of particular relevance to the Plan, UP owns a railroad track and right-of-way that extends through the northeast area of the site (the aforementioned Coast Subdivision main line). The Main Line closely parallels Monterey Road to the southwest, passing through the entire length of Coyote Valley. Approximately 14 passenger and freight trains use the Main Line on a daily basis.

Given UP's significant presence through and around the City of San Jose, UP takes great interest in the City's growth and improvement. It is with this perspective that UP respectfully submits the comments in this letter.

2. Encroachment

The Plan proposes to improve and expand various sections of Monterey Road, which, as noted above, lies immediately adjacent to UP's Main Line. Before the City moves forward with the Plan, the City must make absolutely certain that the proposed development does not encroach upon the UP Main Line right-of-way, which is wider than the track itself.

3. Traffic

Many of the concerns specific to the Plan, including, but not limited to, a concern about traffic, arise from the associated increase in population within the close proximity of the UP Main Line. It is anticipated that the development area of the Plan will ultimately be a community of up to approximately 70,000 to 80,000 residents. The Plan includes land uses such as workplace, residential (including approximately 25,000 dwelling units), retail, mixed-use development, community services, and new roadways. The Plan also proposes the construction of a new CalTrain multimodal station to be located on the western side of Monterey Road, south of the Monterey Road and Bailey Avenue interchange.

As noted, the UP Main Line runs directly through the Plan area and immediately adjacent to the west side of Monterey Road. Currently, there are several local streets connecting to Monterey Road that cross UP's Main Line at-grade. A natural consequence of the increased population will be an increase in traffic volumes not only on Monterey Road, but also through existing and any proposed at-grade rail crossing. Traffic spillover effects may further increase vehicle trips over the at-grade crossings, as motorists attempt to take shortcuts to avoid congestion along primary traffic arterials. Moreover, the planned commercial and residential

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development on both the west and east sides of the Main Line will likely increase local vehicle trips across these at-grade rail crossings. Additional vehicle trips and traffic congestion could negatively impact at-grade rail crossings in the area by increasing the chance of train-vehicular conflicts, thereby raising an obvious safety issue.

UP urges the City to further analyze the Plan's potential impacts on traffic inasmuch as they relate to rail safety and operations along the length of the right-of-way, and traffic flow at at-grade rail crossings. This analysis should pay particular attention to the traffic along Monterey Road and other roadways approaching or crossing the Main Line, such as, without limitation, Laguna, Richmond, Palm, Kalana, San Bruno, Miramonte, Live Oak, and Tilton Avenues. UP's operations must not be affected by greater traffic and potential congestion at at-grade crossings and, thus, adequate mitigation measures should be implemented. Possible mitigation measures include construction at the developer's expense of grade-separated crossings or permanently blocked-off closures of existing at-grade crossings. (For a further discussion on the concern of at-grade crossings, see Section 4 below.)

4. Pedestrian and Bicycle Safety

The addition of this substantial increase in residential population near the UP Main Line creates concerns not only about traffic but also about pedestrian and bicycle safety. Planned land uses along Monterey Road and the Main Line include, without limitation, residential housing, a school, ball fields, and a park, thereby substantially increasing the number of residents in the area. Although some residents are already present, the current population consists primarily of employees at agricultural and industrial sites, such as at the IBM Santa Teresa Laboratory and SBC telecommunications service facilities in the northwestern portion of the Plan area along Bailey Avenue. Residents differ significantly from employees both in terms of their habits and the times of days when they are present. Residents, more than employees, tend to walk in the neighborhoods in which they live. They tend to stroll, walk their dogs, and go jogging—activities in which current employees are far less likely to engage in the industrial and agricultural facilities surrounding their workplaces. Residents walk and jog not only during weekdays, but also at night and on weekends. In addition, because seniors and children spend more time at home than most adults, and because they are less likely to have the ability to drive or have access to a car, seniors and children would be expected to make up a large proportion of the pedestrian and bicyclist activity in the Plan area.

As noted, the UP Main Line extends through the entire northeastern portion of the site, closely parallel to Monterey Road. Consequently, residents living on the site can be expected regularly to come within close proximity to the track and traverse the at-grade rail crossings. This is of particular concern for the Plan considering that the proposed land uses designed in tracks of land immediately adjacent to the UP Main Line include low to high density residential housing, a school, a park and ball fields.

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The concern about safety may also be exacerbated by the Plan's proposal to construct three new pedestrian and vehicular crossings "over/under" Monterey Road and the UP Main Line. (See Draft EIR, § 2.1.7.) The Draft EIR is unclear as to whether these new crossings consist of at-grade or grade-separated rail crossings. However, to the extent that the Plan proposes new at-grade rail crossings, we note that any such new crossings (or modifications to existing crossings) require permission from the California Public Utilities Commission (the "PUC"). In a letter sent to your office and dated May 11, 2007, the PUC stated its preference for grade-separated crossings, recognizing that at-grade crossings all share an inherent safety problem due to their close proximity to Monterey Road. Similarly, UP strongly objects to any proposed at-grade crossings because they have obvious safety implications and could negatively impact train operations.

The City should therefore closely analyze pedestrian and bicycle safety, and set forth appropriate mitigation measures. As the Draft EIR recognizes, Transportation Policy No. 8 of the City's General Plan provides that bicycle and pedestrian safety "should be an important factor in the design of streets and roadways," and therefore appropriate mitigation measures are not only desirable in their own right, but are also crucial to the Coyote Valley Specific Plan's consistency with the General Plan. Specifically, the City should consider requiring the developer to install grade-separated pedestrian and bicyclist crossings as well as require the developer to construct only grade-separated roadways across the UP Main Line. The City may also want to consider requiring the developer to eliminate the existing at-grade rail crossings by either constructing grade-separated crossings at those locations and/or eliminating the crossings altogether. Although UP appreciates the Draft EIR's statement that grade separations of the railroad tracks and existing and future arterials within the Plan area will be considered at the time of development (Draft EIR § 3.1.3.12), UP requests that the City now include, as a condition of approval of the Plan, the requirement that all at-grade rail crossings be grade-separated. Significantly, such a requirement may be necessary for the project's consistency with the City's General Plan, as Transportation Policy No. 39 states that "Whenever possible, grade separation of main line railroads and major arterials [sic] streets, particularly those of six lanes or more should be provided."

Other possible mitigation measures that the City should consider include, but are not limited to, solid barriers (for example, walls, as opposed to fencing, to manage pedestrians and vehicles), pedestrian gates, pavement markings, and signs.

5. Trespassing

The anticipated increase in population and pedestrian traffic also bring the increased risk of trespassing onto UP's right-of-way. The development of housing, schools, parks, ball fields, and trails near the right-of-way can result in more individuals, particularly children, walking onto the track or engaging in mischief that could pose serious safety concerns and interfere with rail service. Some residents could decide to trespass onto the right-of-way, either as a shortcut for

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reaching their destination or for the purpose of extending their walks or jogs. UP generally disfavors the location of pedestrian trails and uses adjacent to its tracks and therefore any trails or pedestrian uses adjacent to or in close proximity of UP's tracks that are currently under consideration should be highly discouraged.

The Draft EIR should study the location of these land uses, including housing, schools, parks, ball fields, and trails, from a safety perspective, and the increased likelihood of trespassing on the Main Line. Possible mitigation measures include relocating such land uses far away from the tracks where possible, setbacks and buffers, the installation of sound walls or other barrier fencing along the full lengths of the right-of-way, "no trespassing" signs, railroad safety education programs, and planning for safe transportation routes to schools, entertainment, shopping, and recreational facilities.

6. Noise

As the Draft EIR recognizes, the site is subjected to noise from a number of major roadways, including US Highway 101 and Monterey Road, and the railroad. It is well-known that UP's rail operations generate the noise one would expect from an active railway. Given that the Plan consists of residential development adjacent to the active railway and near busy vehicular roadways, the planned development in Coyote Valley is likely to expose new residents to these existing noise conditions. In fact, the Draft EIR concluded, based on the results of the noise study, that the proposed development would result in significant noise impacts associated with project-generated traffic and existing railroad operations. (*See, e.g.,* Draft EIR § 4.3.3.3.)

UP appreciates the Draft EIR's proposed mitigation measures for roadway and train noise within the development area, which include, without limitation, site design measures (*e.g.,* setbacks, sound barriers, and buffer areas), and the retention of a qualified Acoustical Engineer to prepare a detailed acoustical analysis of exterior and interior noise reduction requirements and specifications for multi-family housing at all project phases in accordance with City and State standards. (*See* MM NOI-6.1 – 6.6.) UP encourages the City to retain and enforce these mitigation measures discussed in the Draft EIR. UP also suggests that the City consider requiring additional mitigation measures, such as sound-proofing materials and techniques in the project, and requiring as a condition of approval that the developer disclose to the general public the daytime and nighttime noise levels naturally associated with the railroad's long-standing passenger and freight rail uses within the Plan area.

7. Vibration

As the Draft EIR recognizes, the Plan proposes to locate vibration-sensitive residential land uses adjacent to the existing UP Main Line. It is well-known that UP's rail operations, as well as passenger trains, generate vibration normally associated with an active railway. The Plan is therefore likely to expose new residents to existing vibration. In fact, the Draft EIR concluded, based on the results of the vibration study, that the proposed development would

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result in significant ground vibration impacts associated with existing railroad operations. (*See, e.g., Draft EIR § 4.3.3.3.*)

Significantly, UP notes that the Draft EIR's analysis of vibration impacts was limited to ground vibration only. Freight and passenger trains, however, generate both airborne and ground vibration. Consequently, UP suggests that the City also include in the Draft EIR an analysis regarding the possible impacts of airborne vibration as well.

UP appreciates the Draft EIR's proposed mitigation measures for vibration impacts, which include, without limitation, setbacks and monitoring studies. (*See MM NOI 7.1 – 7.4.*) UP suspects, however, that MM NOI 7.1 contains a typo in that it states that residential uses "shall be located at or less than 150 feet from the center of the railroad tracks." (Emphasis added.) As such, UP requests that the language be revised to require that residential uses "shall be located at or more than 150 feet from the center of the railroad tracks," which UP believes was originally intended by the drafters and is necessary to more adequately mitigate vibration impacts. In addition, UP requests that the City supplement these proposed mitigation measures to include a condition of approval that requires the developer to disclose to the general public this pre-existing and predictably-occurring vibration, as well as construction and design techniques (*e.g., trenching and/or floating floors*) that absorb and/or minimize interior vibration.

8. Mechanical Odor

Finally, it is also well-known that locomotives not only generate noise and vibration, but also may emit mechanical odors. Other existing land uses in and around the site include industry and commerce, and such land uses typically generate odors associated with their specific uses, thereby potentially resulting in cumulative impacts that some people in the area may notice. The City should therefore analyze these potential impacts in the Draft EIR and implement adequate mitigation measures.

UP appreciates this opportunity to comment on the Notice of Availability for the Plan and hopes that the City, as lead agency, gives due consideration to the above concerns. On UP's behalf, we would welcome the opportunity to sit down together with City officials and staff to discuss this Plan as it progresses or any other project that may relate to UP's property or operations within the area. Such a discussion would afford UP and the City the opportunity to work in collaboration to ensure that the Plan and all future development near UP lines are compatible with the rail services that will continue to serve the area for years to come.

Please give notice to UP of all future developments with respect to this Plan and any other proposed transportation improvements in the vicinity as follows:

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Mr. Terrel Anderson
Manager of Industry and Public Projects
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, California 95747-7101

With a copy to:
Andrew Bassak, Esq.
Shirley Jackson, Esq.
Steefel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, California 94111.

Please do not hesitate to contact our office if you would like to schedule a meeting with UP or have any questions. UP will monitor this project with interest.

Sincerely,

A handwritten signature in cursive script that reads "Shirley E. Jackson".

Shirley E. Jackson

cc: Andrew Bassak, Esq.
Mr. Terrel Anderson
21066:6595692.2